

1 Kevin D. Smith (State Bar No. 113633)
2 Joshua A. Quinones (State Bar No. 186003)
3 Tracy M. Lewis (State Bar No. 232985)
4 **WOOD, SMITH, HENNING & BERMAN LLP**
5 505 North Brand Boulevard, Suite 1100
6 Glendale, California 91203
7 Phone: 818 551-6000 ♦ Fax: 818 551-6050
8 E-mail: ksmith@wshblaw.com
9 jquinones@wshblaw.com
10 tlewis@wshblaw.com

11 Attorneys for Defendant, FRANKE, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CSAA,

Plaintiff(s),

v.

FRANKE, INC.,

Defendant(s).

CASE NO. C 08-01642 EDL

DEFENDANT FRANKE INC.'S ANSWER
TO PLAINTIFF'S COMPLAINT

[Assigned for All Purposes to Honorable Elizabeth D.
Laporte]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

COMES NOW Defendant, FRANKE, INC., (hereinafter "Responding Party")

answering for itself alone, the Complaint of Plaintiff, CALIFORNIA STATE AUTOMOBILE
ASSOCIATION, INTER-INSURANCE BUREAU (hereinafter "Plaintiff") and admits,
denies and alleges as follows:

1. Answering paragraph No. 1 of the Complaint filed herein, Responding Party
lacks sufficient information or knowledge to form a belief as to the truth of the allegations
contained therein, and on that basis denies each and every allegation contained therein
and the whole thereof.

2. Answering paragraph No. 2 of the Complaint filed herein, Responding Party
lacks sufficient information or knowledge to form a belief as to the truth of the allegations

1 contained therein, and on that basis denies each and every allegation contained therein
2 and the whole thereof.

3 3. Answering paragraph No. 3 of the Complaint filed herein, Responding Party
4 lacks sufficient information or knowledge to form a belief as to the truth of the allegations
5 contained therein, and on that basis denies each and every allegation contained therein
6 and the whole thereof.

7 4. Answering paragraph No. 4 of the Complaint filed herein, Responding Party
8 admits that it is a corporation doing business in the State of California, including the
9 County of Marin; Responding Party also admits that it is engaged in the business of
10 marketing and selling water filters for use by the general public in the County of Marin.
11 Except as admitted above, Responding Party denies each and every allegation contained
12 in paragraph 4.

13 5. Answering paragraph No. 5 of the Complaint filed herein, Responding Party
14 lacks sufficient information or knowledge to form a belief as to the truth of the allegations
15 contained therein, and on that basis denies each and every allegation contained therein
16 and the whole thereof.

17 6. Answering paragraph No. 6 of the Complaint filed herein, Responding Party
18 lacks sufficient information or knowledge to form a belief as to the truth of the allegations
19 contained therein, and on that basis denies each and every allegation contained therein
20 and the whole thereof.

21 7. Answering paragraph No. 7 of the Complaint filed herein, Responding Party
22 denies each and every allegation contained therein and the whole thereof.

23 8. Answering paragraph No. 8 of the Complaint filed herein, Responding Party
24 admits that serial number FR 077691 identifies a Franke Triflow water filter. Except as
25 admitted above, Responding Party denies each and every allegation contained in
26 paragraph 8. Specifically, the Responding Party lacks sufficient information or
27 knowledge to form a belief as to the truth of the allegation that the Franke Triflow water
28 filter, serial number FR 077691, was installed in the second story kitchen of the

1 INSURED PREMISES within the five years preceding the filing of the complaint, and on
2 that basis denies such allegations.

3 9. Answering paragraph No. 9 of the Complaint filed herein, Responding Party
4 lacks sufficient information or knowledge to form a belief as to the truth of the allegations
5 contained therein, and on that basis denies each and every allegation contained therein
6 and the whole thereof.

7 10. Answering paragraph No. 10 of the Complaint filed herein, Responding
8 Party denies each and every allegation contained therein and the whole thereof.

9 11. Answering paragraph No. 11 of the Complaint filed herein, Responding
10 Party lacks sufficient information or knowledge to form a belief as to the truth of the
11 allegations contained therein, and on that basis denies each and every allegation
12 contained therein and the whole thereof.

13 12. Answering paragraph No. 12 of the Complaint filed herein, Responding
14 Party lacks sufficient information or knowledge to form a belief as to the truth of the
15 allegations contained therein, and on that basis denies each and every allegation
16 contained therein and the whole thereof.

17 13. Answering paragraph No. 13 of the Complaint filed herein, Responding
18 Party lacks sufficient information or knowledge to form a belief as to the truth of the
19 allegations contained therein, and on that basis denies each and every allegation
20 contained therein and the whole thereof.

21 14. Answering paragraph No. 14 of the Complaint filed herein, Responding
22 Party admits that Plaintiff has provided the Responding Party with notice of the alleged
23 damages and payments made as well as Plaintiff's alleged right to reimbursement in
24 subrogation, which has been refused by Responding Party. Except as so admitted, with
25 respect to Paragraph 14, Responding Party lacks sufficient information or knowledge to
26 form a belief as to the truth of the allegations contained therein, and on that basis denies
27 each and every allegation contained therein and the whole thereof.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Waiver)

15. As a separate and distinct affirmative defense, this Responding Party is informed and believes, and thereon alleges, that plaintiff engaged in conduct and/or activities sufficient to constitute a waiver of any alleged duty, breach, negligence, or any other tortious conduct, if any, as set forth in the complaint.

SECOND AFFIRMATIVE DEFENSE

(Estoppel)

16. As a separate and distinct affirmative defense, this Responding Party is informed and believes, and thereon alleges, that plaintiff is estopped from asserting any claim for damages or injunction, or seeking any other relief against this Responding Party.

THIRD AFFIRMATIVE DEFENSE

(Laches)

17. As a separate and distinct affirmative defense, this Responding Party is informed and believes, and thereon alleges, that plaintiff has unreasonably delayed in bringing this action to the prejudice of the Responding Party and is, therefore, barred from bringing this action pursuant to the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Comparative Negligence)

18. As a separate and distinct affirmative defense, this Responding Party is informed and believes, and thereon alleges, that any and all events and happenings, injuries, losses and expenditures referred to in the complaint were directly, legally, and proximately caused and contributed to, in whole or in part, by the carelessness and negligence of plaintiff herein, such that any loss, damage or expenditures sustained or incurred by plaintiff should be reduced in relative proportion to the negligence or fault of plaintiff.

FIFTH AFFIRMATIVE DEFENSE

(Negligence of Third Parties)

3 19. As a separate and distinct affirmative defense, this Responding Party is
4 informed and believes, and thereon alleges, that the injuries alleged in the complaint
5 (if any), to the extent not caused or contributed to by plaintiff, were proximately caused or
6 contributed to by the negligence and fault of third persons, including but not limited to
7 plaintiff's insured, other defendants and persons/entities not yet a party to this action; and
8 by reason thereof, this Responding Party's liability (if any) should be no greater than the
9 amount which, when expressed as a percentage of plaintiff's total damage (if any), is
10 equal to this Responding Party's allocable share (if any) of the combined negligence and
11 fault of such third persons who proximately caused or contributed to the damages (if
12 any).

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

15 20. As a separate and distinct affirmative defense, this Responding Party is
16 informed and believes, and thereon alleges, that Plaintiff's Complaint and each and every
17 cause of action therein contained are barred by any and all applicable statutes of
18 limitations, including, but not limited to California Code of Civil Procedure Sections 335,
19 338, 340 and 343.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

22 21. As a separate and distinct affirmative defense, this Responding Party is
23 informed and believes, and thereon alleges, that the complaint, and each cause of action
24 therein, is barred by virtue of the plaintiff's conduct in causing or contributing to the
25 damages alleged in the complaint under the doctrine of unclean hands.

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EIGHTH AFFIRMATIVE DEFENSE

(Spoliation of Evidence)

3 22. As a separate and distinct affirmative defense, this Responding Party is
4 informed and believes, and thereon alleges, that plaintiff or others, either intentionally or
5 negligently, may have failed to preserve primary evidence relevant to this litigation as
6 against this Responding Party, thus failing to give the Responding Party an opportunity to
7 inspect said evidence, and thereby damaging and prejudicing the Responding Party's
8 ability to present the appropriate and otherwise-available defenses. Plaintiff should be
9 barred from introducing secondary or lesser evidence, and any recovery should be
10 diminished accordingly.

NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

13 23. As a separate and distinct affirmative defense, this Responding Party is
14 informed and believes, and thereon alleges, that the plaintiff had a duty to mitigate its
15 damages, but failed to exercise reasonable care and diligence to avoid further loss or
16 injury and to minimize its damages. Consequently, the plaintiff may not recover for
17 losses which could have been prevented by reasonable efforts on its part, or by
18 expenditures which might reasonably have been made on its behalf. Therefore, recovery
19 (if any) should be reduced by the plaintiff's failure to mitigate damages.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

22 24. As a separate and distinct affirmative defense, this Responding Party is
23 informed and believes, and thereon alleges, that if any damage was sustained as alleged
24 in the complaint, that damage was a result of plaintiff's assumption of risk of harm.
25 Plaintiff had actual knowledge of the particular risk or danger, knew and understood the
26 degree of the risk or danger involved and voluntarily assumed such risk. Plaintiff's
27 reasonable implied assumption of a risk of harms bars recovery herein.

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ELEVENTH AFFIRMATIVE DEFENSE

(Lack of Proximate Cause)

3 25. As a separate and distinct affirmative defense, this Responding Party is
4 informed and believes, and thereon alleges that none of acts or omissions on its part
5 actually and/or proximately caused or contributed in any manner to any losses or
6 damages for which plaintiff seeks recovery.

TWELFTH AFFIRMATIVE DEFENSE

(Not a Substantial Factor)

9 26. As a separate and distinct affirmative defense, this Responding Party is
10 informed and believes, and thereon alleges that none of the acts or omissions on its part
11 were a substantial factor in bringing about the injuries and damages for which plaintiffs
12 seek recovery.

THIRTEENTH AFFIRMATIVE DEFENSE

(Acted with Due Care)

15 27. As a separate and distinct affirmative defense, this Responding Party is
16 informed and believes, and thereon alleges, that at all times relevant, the Responding
17 Party acted with due care and in accordance with all statutory and regulatory
18 requirements.

FOURTEENTH AFFIRMATIVE DEFENSE

(Intervening and Superseding Acts)

21 28. As a separate and distinct affirmative defense, this Responding Party is
22 informed and believes, and thereon alleges, that the plaintiff's claims are barred or limited
23 by the superseding or intervening negligence or other acts or omissions of third parties
24 over whom defendant has no control, and if the Responding Party acted in any manner
25 negligently or wrongfully, which Responding Party expressly denies, the aforesaid
26 negligence, other acts or omissions of third parties constituted an intervening and
27 superseding cause of all damages alleged in the complaint.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**
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(Collateral Estoppel and Res Judicata)

3 29. As a separate and distinct affirmative defense, this Responding Party is
4 informed and believes, and thereon alleges, the complaint and the separate causes of
5 action therein are barred under the doctrines of collateral estoppel or res judicata or both.

6 **SIXTH AFFIRMATIVE DEFENSE**
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(Reservation of Right to Assert Additional Defenses)

8 30. This Responding Party states and asserts that it presently has insufficient
9 knowledge or information upon which to form a belief as to whether additional, as-yet-
10 unasserted affirmative defenses may be applicable or otherwise available. Thus, this
11 Responding Party reserves the right to assert such additional affirmative defenses in the
12 event discovery and/or investigation indicates that it would be appropriate to do so,
13 pursuant to Federal Rule of Civil Procedure, Rule 15.

14 **WHEREFORE**, Franke Inc., prays for relief as follows:

15 1. That plaintiff take nothing by way of its Complaint;
16 2. That judgment be entered in favor of Franke Inc., and against plaintiff;
17 3. That Franke Inc., be awarded its costs of the suit; and

18 For such other relief as the Court may deem just and proper.

19 20 DATED: June 4, 2008

WOOD, SMITH, HENNING & BERMAN LLP

21 22 By: 

23 JOSHUA A. QUINONES

24 TRACY M. LEWIS

25 Attorneys for Defendant, FRANKE, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 505 North Brand Boulevard, Suite 1100, Glendale, California 91203.

On June 4, 2008, I served the following document(s) described as **DEFENDANT FRANKE INC.'S ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

BY MAIL: I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Glendale, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 4, 2008, at Glendale, California.

Karen Moreno
Karen Moreno

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SERVICE LIST
CSAA v. Franke, Inc.
USDC Case No. C 08-01642 EDL

Robert E. Wall, Esq.
Laura Uddenberg, Esq.
Grunsky, Ebey, Farrar & Howell
240 Westgate Drive
Watsonville, CA 95076
Tel: (831) 722-2444 / Fax: (831) 722-6153
**Attorneys for Plaintiff, CALIFORNIA
STATE AUTOMOBILE ASSOCIATION,
INTER-INSURANCE BUREAU**

John W. Shaw, Esq.
Shaw, Terhar, & LaMontagne, LLP
707 Wilshire Boulevard
Suite 3060
Los Angeles, CA 90017
Tel: (213) 614-0400/Fax: (213) 629-4534
**Attorneys for Defendant, JOHN GUEST
USA, INC.**